

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF WASHINGTON

3 UNITED STATES OF AMERICA, )  
4 )  
5 Plaintiff, ) No. 09-CR-089-RHW  
6 vs. ) November 18, 2010  
7 ) Spokane, Washington  
8 TIMOTHY A. SHELLY, )  
9 ) Transcript of:  
10 Defendant. ) Sentencing Hearing  
11 )

12 BEFORE THE HONORABLE ROBERT H. WHALEY  
13 SENIOR UNITED STATES DISTRICT JUDGE  
14

15 APPEARANCES:

16 For the Plaintiff: Stephanie J. Lister  
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21 For the Defendant: Amy H. Rubin  
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1 (November 18, 2010; 11:30 a.m.)

2 THE COURTROOM DEPUTY: We have United States of  
3 America v. Timothy Shelly, Case No. CR09-089. Time set for  
4 sentencing hearing.

5 THE COURT: Let me see if I'm correct on where we are.  
6 We have a plea agreement that asks the Court to sentence to  
7 12 years. Either party can withdraw if I don't. I'm going to  
8 sentence to 12 years in accordance with the agreement.

9 It seems that there's an agreement between the parties as  
10 to the terms of supervised release. So the only thing I  
11 understand that needs to be argued is the term of supervised  
12 release, and the government is asking for life and the defense  
13 is asking for ten years. Did I summarize that correctly?

14 MS. RUBIN: Yes, Your Honor.

15 THE COURT: Okay. So I don't need to hear anything  
16 about the sentence. I'll go along with the plea agreement. So  
17 let me just hear about the supervised release. I doubt there's  
18 much to say. You want as long as you can get, and you think ten  
19 years is appropriate. But -- and I'll hear from you. I'm not  
20 trying to cut you off.

21 MS. LISTER: Your Honor, I just think that this is a  
22 particularly egregious case because the defendant misrepresented  
23 who he was, enticed a young girl to talk to him about sex, and  
24 then actually traveled here to the Eastern District of  
25 Washington to have sex with her.

1 I think what's also difficult in this case is that after  
2 the little girl had said to him -- you know -- that the cops  
3 knew about this, he still continued his activity. So he doesn't  
4 seem to be someone who is deterred, and that's a concern. So I  
5 think that the safest course is a life term of supervised  
6 release because the risk is that he will do this again and that  
7 another child will be victimized. And, of course, once a child  
8 is victimized, that stays with them for the rest of their life.  
9 And I think that in this case, his conduct should be something  
10 that is supervised for the rest of his life.

11 THE COURT: All right. Come on up, Mr. Shelly and  
12 Ms. Rubin.

13 MS. RUBIN: Good morning.

14 THE COURT: Good morning.

15 MS. RUBIN: Your Honor, just for the record, we have  
16 reviewed the pre-sentence investigation report in this case. We  
17 have no objection. We did provide the Court, as well as all the  
18 parties, a copy of a video that was prepared by Mr. Peven, in my  
19 office, as well as Mr. Caballero. They interviewed Mr. Shelly's  
20 sisters and met with his wife while they were able to travel to  
21 Michigan. In addition, we did provide a letter that was  
22 submitted by Mr. Shelly's wife. So I hope the Court was able  
23 to -- oh -- and plus the report by Dr. Wert.

24 Your Honor, this is a very difficult case. It's difficult  
25 for a number of reasons. There is no minimizing the conduct in

1 this case, and Mr. Shelly would be the first to tell you that.

2 Certainly, I think that -- in allowing us to provide the  
3 Court with the video, I think it gives some indication as to  
4 Mr. Shelly's upbringing, some of the things he went through as a  
5 child, and some of the things he continued going through as an  
6 adult. One thing that is very clear with Mr. Shelly is the  
7 support and love that he has from his sisters and his family.  
8 And that has continued from the moment of his arrest and will  
9 continue while he serves out a very lengthy sentence that this  
10 Court will impose.

11 It has not been an easy year and a half for Mr. Shelly  
12 because, of course, as this Court knows, this case started long  
13 ago. The allegations and the behavior started in 2005, and I  
14 believe by Labor Day or November, where everything had happened  
15 by then, and then, of course, the investigation ensued. It took  
16 about four years for this case to come over to the Eastern  
17 District of Washington. And during that time, it was not an  
18 easy time for Mr. Shelly, always wondering: Is this the day  
19 that someone is going to arrest me? No one has come to talk to  
20 me about this case. No one has interviewed me about this case.  
21 So, in essence, for Mr. Shelly, this case has been going on for  
22 almost six years.

23 He has spent the last year and a half in Spokane County  
24 Jail, and I think he would tell you that there are some things  
25 that have happened to him over the last year and a half that

1 have almost been a blessing in disguise. He has actually been  
2 able to control his diabetes. Spokane County Jail has been  
3 wonderful in their treatment of his diabetes. But spending  
4 time, especially a year and a half, in a county jail is not easy  
5 for anyone. Spokane County Jail has a very lengthy lockdown  
6 situation that they've been going through for a number of  
7 months. Mr. Shelly has also been very far from his family, has  
8 not been able to have visits the way other people who are from  
9 this area would have that opportunity. So the last year and a  
10 half has really provided him with time to think about this case,  
11 think about the future, what goals he has, and what he intends  
12 to do to make sure that this never happens.

13       Although this case is egregious, and there is no dispute  
14 about that, what is interesting about this case, and I think  
15 which Dr. Wert presents to in his report, is the fact that  
16 Mr. Shelly really presents a low risk of recidivism. This is  
17 not a man who was looking at child pornography on a daily basis.  
18 This is not someone who was downloading child pornography. He  
19 met a young woman. And albeit a horrible, horrible decision to  
20 engage in a relationship with this person, he met her on line in  
21 an adult chat room. And they met; and shortly after meeting, he  
22 did indicate -- you know -- she knew of his age. This was not a  
23 situation where he continued to troll websites that had -- you  
24 know -- young victims on it. He met her in an adult chat room.  
25 He was looking to meet people on line. He was not looking to

1 meet girls that were 12, 13 on line. He was looking for  
2 relationships on line. It was a horrible decision. But I think  
3 when you look at Mr. Shelly, you look at who he is, you look at  
4 his prior relationships, I think what was evident at that time  
5 was this was a man who was -- first of all, he's very, very shy.  
6 I know it's going to be difficult for him to address the Court  
7 because he is so shy. He doesn't like public speaking, and I  
8 know that's very hard for him. He did not engage in many  
9 serious relationships. He met a woman. They married. But  
10 their marriage was basically a marriage between friends. I  
11 think that the intimacy was gone shortly after their marriage.  
12 They have remained good friends and continue to love one  
13 another. But Mr. Shelly was looking to engage in a  
14 relationship. And, frankly, when you are shy, when you are  
15 someone who isn't able to meet people very easily, the computer  
16 is almost a safe place. And so he began to meet people on line  
17 because, on line, he didn't have to be shy. He could be  
18 himself, and he wasn't going to be judged. And as I said, he  
19 met this young woman. And it was a horrible, horrible decision;  
20 a lapse of judgment I know that he regrets every single day.

21 Now, we have many clients that come before this Court; and  
22 I know this Court has often indicated that although people say  
23 they're sorry, it's probably more that they're sorry they got  
24 caught. But Mr. Shelly has been living with this case for six  
25 years. And I think for him, it's almost a relief to be able to

1 resolve this case, to be able to move forward with his life.

2       And moving forward with his life, we're talking 12 years  
3 or -- you know -- now what may be ten and a half by the time you  
4 figure good time and the time he's served -- ten years in  
5 custody. And we're asking for ten years of supervision. And  
6 when you consider all the time that this case has been ongoing,  
7 it's going to have lasted him almost a quarter of a century --  
8 25 years by the time all is said and done, if the Court follows  
9 our recommendation.

10       I would certainly understand the Court's perspective and  
11 certainly the government's perspective if this was a man who had  
12 continued in the behavior between the time that the computer was  
13 turned over to authorities and the time that he was ultimately  
14 arrested, but nothing happened. There's no indication that he  
15 was ever involved in anything else like this. It happened one  
16 time. He learned his lesson. And I certainly think that the  
17 four years between at the time of the computer being turned  
18 over, knowing that authorities had this information, knowing  
19 that there had been, obviously, interviews with the victim, and  
20 between his arrest I think are just very indicative of the fact  
21 that this man can change. He has already demonstrated the  
22 ability to rehabilitate, to be deterred. In ten years, plus the  
23 time he serves in prison, he is going to receive an exorbitant  
24 amount of treatment. I would find it highly unlikely he would  
25 not receive treatment in prison because, of course, with such a

1 lengthy sentence, he will have the ability to qualify for  
2 whatever treatment BOP deems appropriate and to probably  
3 complete it within a very -- I mean, probably short -- long  
4 before he has completed his sentence. And then he will, of  
5 course, have treatment as recommended by the probation office  
6 with regard to his conditions of release as a part of his  
7 supervised release. And so, frankly, in 20 years, I think that  
8 it would be very, very clear whether or not he is a risk of  
9 reoffending, which I think he's already demonstrated he is not.

10       The one thing that I will note for the record that's been  
11 very -- just, I think, inspiring with Mr. Shelly is that  
12 although the year and a half has been extremely difficult for  
13 him, although it has been very hard to be so far away from his  
14 family, I have never, ever, ever, ever had a conversation or met  
15 with Mr. Shelly when he is not just completely upbeat. He  
16 always has accepted responsibility for his actions in this case;  
17 and he has always been ready to move forward with his life,  
18 knowing that he has a significant amount of treatment ahead of  
19 him.

20       There is not one day that has gone by that he has not felt  
21 just remorse and sadness for the damage and the hurt that he has  
22 caused the victim, to her family, to his family. But I think  
23 what's important is that you can do your time two ways. You can  
24 go in to do your time and just treat it as dead time, you're not  
25 going to take advantage of anything, you're going to sit there



1 and be angry with the system, or you can do your time the way  
2 Mr. Shelly intends to do his time, which is to say: Hey, look.  
3 I have this opportunity ahead of me. I'm going to take  
4 advantage of every single thing that the BOP has to offer  
5 because, at the end of this, I am going to come out a better  
6 person. I am going to show everybody that I can succeed. And  
7 I'm going to be successful because I'm going to do what it takes  
8 to move forward with my life and put this matter behind me and  
9 never repeat this type of behavior again.

10 We cannot change the past. We cannot change the damage  
11 that has been done. And I assure you that Mr. Shelly -- if he  
12 could apologize to the victim and to her family in court today,  
13 he absolutely would. But he feels huge amounts of regret and  
14 huge amounts of remorse. And that is a sincere and heartfelt  
15 feeling that he has had since the moment I met him. We cannot  
16 change the past. But I can assure this Court that he will use  
17 the next ten and a half years to change his future. And I  
18 assure this Court that he will use whatever time on supervised  
19 release that this Court deems appropriate to continue making  
20 strides in his life, to continue being a better person, because  
21 I believe that he has the qualities to do that. I believe he's  
22 already demonstrated that. And I believe that ten years is  
23 sufficient for a situation like we are faced with today.

24 THE COURT: Anything you'd like to say, Mr. Shelly?

25 THE DEFENDANT: Yes, Your Honor. There's nothing to

1 excuse the position that I find myself in today. I've been in  
2 custody for over a year, and there's not one day that has passed  
3 that I do not think about what I have done and how remorseful I  
4 am for my action. I cannot change what has happened, but I  
5 assure this Court that it will never happen again.

6       The Court has had an opportunity to see a bit about my  
7 background, so I will not repeat what the Court has already  
8 heard. I was never a social person, nor was I a person who ever  
9 had that many relationships. When my marriage ended, I found  
10 myself lonely, looking for friendships, with the possibility of  
11 relationships. I am shy and have always shied away from social  
12 settings.

13       The computer opened up a whole new world for me. I met  
14 people from all over, and I felt like I had friends. No one on  
15 the Internet judged me, and I could be myself.

16       When I met the victim on the Internet, it was happenstance.  
17 I never once looked for younger girls. I met the victim, and we  
18 became friends. I understand why this relationship was wrong.  
19 But at the time, I was lonely; and we cared about each other.  
20 It was a horrible lapse of judgment, and I know this. I can  
21 only imagine what she and her family have gone through, and that  
22 is something I will live with for the rest of my life. I am so  
23 sorry for what I have put the victim through, her family  
24 through, and my family through.

25       There are consequences for my actions, and I am prepared

1 for the sentence this Court will impose. I ask the Court to  
2 follow the plea agreement, and I also ask this Court to consider  
3 ten years of release. I will not ever reoffend. And I feel  
4 that what speaks the strongest to this is the fact of the four  
5 years between the police taking my computer and when I was  
6 arrested. I give the Court my word that I will follow every  
7 condition and successfully complete supervision. I plan to take  
8 every opportunity, treatment, employment, and classes in prison  
9 to better myself so I can live a successful life upon my  
10 release.

11 THE COURT: Did you go over the pre-sentence report  
12 with Ms. Rubin?

13 THE DEFENDANT: Yes, I did, Your Honor.

14 THE COURT: Did you have any other changes or  
15 additions you wanted to make?

16 THE DEFENDANT: No. No, sir.

17 MS. RUBIN: Your Honor -- and one thing I forgot to  
18 mention is that, number one, we would ask the Court to recommend  
19 a facility called Milan. It's about 45 minutes from Detroit.

20 THE COURT: How do you spell that?

21 MS. RUBIN: M-i-l-a-n. That would be the closest  
22 facility to his family. And obviously, the BOP will determine  
23 whether he's eligible. I don't know at this point. But that  
24 would be the closest facility. And, second, if the Court would  
25 be willing to recommend the RDAP program as well. There are

1 obviously some indications in the PSR with regard to substance  
2 abuse. And I think that Mr. Shelly could certainly benefit from  
3 that as well in prison.

4 THE COURT: Mr. Shelly, the only thing that's really  
5 contested today is how long to put you on supervised release.  
6 I'm going to put you on lifetime supervised release, but I want  
7 to talk to you about that.

8 I want you -- and I'm going to put a notation in the file.  
9 And if I'm still here, you'll come back to me. If I'm gone to  
10 my great reward, whoever took my place will have your supervised  
11 release. And when you get pushing out to ten years of it and  
12 you have no trouble, I want you to contact a lawyer or the  
13 probation office and tell them that I said that you should come  
14 back before the Court to see if it should be reduced in length  
15 because it's a great administrative burden on the government to  
16 have somebody on supervised release for life. And it's  
17 certainly justified if the record justifies it, but I don't  
18 know -- if you've successfully gone through up to ten years, it  
19 would be my belief that I would look at the record then; and if  
20 I didn't see anything that surprised me, I would probably  
21 terminate you early.

22 So when you get out to close to ten years of your  
23 supervised release, there will be a notation in my court file,  
24 and there should be one in Ms. Rubin's file and in the probation  
25 file, that the Court asked you -- I can't schedule it today,

1 obviously. So it will be up to you to do that. But this  
2 record -- I'll have Ms. Clark type up my remarks and give it to  
3 Ms. Rubin and the probation office and then my file. And  
4 between those different people, someone ought to be able to come  
5 up and remember what I said today. And what I'm saying is that  
6 your crime is sufficient for me -- there was a victim. I don't  
7 know if there are any others or not. I'm not worried about it  
8 because it's an agreed sentence, and I'm not trying to judge  
9 that. But 13-year-old girls and people your age that -- there's  
10 just not much excuse for it, and it is dangerous. So I don't  
11 mind you being subject to restrictions for your life if they're  
12 necessary. But I also think if you make it through ten years  
13 and you have not had anything happen in that ten years that  
14 raised any red flags about continued supervision, I would  
15 consider an early release at the ten-year point. So that will  
16 be in the record, and then you can take advantage of that if you  
17 want.

18 I'm going to impose the conditions of supervised release  
19 that have been agreed to.

20 Ms. Rubin -- her remarks sound like me sometimes when I'm  
21 trying to talk to somebody. You can either go into this prison  
22 system -- which is going to be difficult for you. I mean, it's  
23 just a time that you can sort of deteriorate to a point that  
24 you're not much use to anything when you get out. Or you can  
25 use the time by keeping your head, thinking about this is not

1 the end. And whatever programs you can participate in, whatever  
2 educational opportunities you can take advantage of, whatever  
3 recreational things you can do that are healthy -- because  
4 there's a lot of opportunity to waste your time and get involved  
5 in worse things in prison if you want to. Unless you take a  
6 positive decision not to, that's where you're going to end up.

7       If you do that, with the type of support that it sounds  
8 like you've got from the people in your background, and with the  
9 help of the probation department that's going to kind of  
10 structure you for a while, trying to get back on your feet, and  
11 using whatever tools are available then to get you back employed  
12 and that sort of thing, then you've got a life to lead; and then  
13 you can -- you can get this behind you. But if you don't do  
14 that, if you kind of waste your time, I believe when you get  
15 out, it's going to be only worse.

16       Do you have any questions?

17       THE DEFENDANT: No, Your Honor. I would agree with  
18 what you've just said, though. I absolutely am looking forward  
19 to putting it all behind me and taking everything as positive as  
20 I can make it.

21       THE COURT: I'm going to give you just a little piece  
22 of -- I mean, you're a captive audience. You couldn't escape my  
23 remarks if you wanted to. But I did something that I never  
24 thought I could do. I went to a competitive college, and I was  
25 scared to death that I was going to flunk out. I went to an Ivy

1 League college. And I bought myself a ring within the first  
2 month I was there to show that I'd gone there because I figured  
3 I'll be there about six months; and I'm the last guy they let  
4 in, and they're going to flunk me out. I made it through,  
5 but -- and I didn't do that badly. But I never took a language  
6 because -- you had a distribution requirement of taking a  
7 language for two years, or you could take certain other courses.  
8 So I took the other ones. And so I never spoke another  
9 language, and I always felt like I had let myself down by not  
10 having tried to learn another language.

11       When I got on the federal court, within about two weeks of  
12 sitting up here, I saw how different the community was from the  
13 one that I had known before because, in other places besides  
14 Spokane, we've had an enormous influx of people from  
15 Spanish-speaking countries that haven't learned to speak  
16 English. So I decided to learn to speak Spanish.

17       My point is that from the time I started -- and I had an  
18 old brain. I mean, I was in my fifties. And by just doing it a  
19 little bit every day, I have learned to speak Spanish. And I  
20 could do this proceeding in Spanish. I'd make some mistakes,  
21 but I could do it. And I could live in a Spanish-speaking  
22 country, and I think I could get along.

23       You've got an opportunity to -- you've got almost ten  
24 years. You're going to be around lots of people with lots of  
25 different languages. There may be some people there that speak

1 Russian or Chinese or Vietnamese. There are certainly going to  
2 be Hispanics. One thing you could do is just try to learn to  
3 speak another language. It would keep your brain agile. It  
4 requires you to use processes that you don't use normally. They  
5 even say learning a new language helps people who might get  
6 Alzheimer's. It's just one small thing you could do. I mean,  
7 you could take up trying to develop knowledge about the solar  
8 system or something. There's books available -- but something  
9 that keeps you from just vegetating. And I say all that because  
10 your sentence is long enough that you will vegetate if you don't  
11 actively decide not to.

12 Court's in recess.

13 THE COURTROOM DEPUTY: There's the fine and the  
14 special penalty assessment.

15 THE COURT: I'm going to waive the fine, and I'm going  
16 to impose the \$200 special penalty assessment.

17 MS. LISTER: And the government moves to dismiss the  
18 count of production, Your Honor.

19 THE COURT: All right.

20 MS. RUBIN: Just two other things, Your Honor. If  
21 he's not eligible for --

22 THE COURT: You're still not through?

23 MS. RUBIN: I'm still not through.

24 THE COURT: Okay.

25 MS. RUBIN: You know, I've got a limited time to talk.



1 As of January, I've got three months off, so --

2 As far as the placement, if he's not eligible for Milan,  
3 could the Court put something in the judgment that says as close  
4 to Detroit, Michigan, as possible, since that's where his home  
5 is? And then, second of all, would the probation officer here  
6 be willing to forward the Court's notes to the probation office  
7 in Michigan? So that way, his supervising probation officer  
8 would be notified that within -- you know -- within the ten-year  
9 period, if he's doing well, he would be able to --

10 THE COURT: I might let you do that.

11 MS. RUBIN: I can do that. I'm happy to do that.

12 THE COURT: Okay.

13 MS. RUBIN: All right.

14 MS. LISTER: Your Honor, we'd ask that you order the  
15 forfeiture pursuant to the plea agreement.

16 THE COURT: All right. So be it.

17 MS. RUBIN: Thank you.

18 THE COURT: Court's in recess.

19 (The proceedings recessed at 11:55 a.m.)  
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## C E R T I F I C A T E

I, DEBRA KINNEY CLARK, do hereby certify:

That I am an Official Court Reporter for the United States District Court at the Eastern District of Washington;

That the foregoing proceedings were taken on the date and at the time and place as shown on page 1 hereto; and

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this 29th day of November, 2010.

/s/Debra Kinney Clark

Official Court Reporter  
United States District Court  
Eastern District of Washington